progress of the people in education and refinement we may expect the appreciation of the beautiful to be increased, and we can agree with the view taken by the Massachusetts court in a later decision: "It may be that in the development of a higher civilization, the culture and refinement of the people has reached the point where the educational value of the Fine Arts, as expressed and embodied in architectural symmetry and harmony, is so well recognized as to give sanction, under some circumstances, to the exercise of this power even for such purposes." *Cochran* v. *Preston,* 108 Md. 220, 23 L. R. A. N. S. 1163, 129 Am. St. Rep. 432, 70 Atl. 113, 15 A. & E. Ann. Cas. 1048. The weight of authority, however, as well as the decision in that case, is opposed to permitting the exercise of the police power in restraint of the use of property upon mere aesthetic considerations, and until public opinion has changed so as to support or demand such a decision, we may expect the courts to hold that the owner's right to use his land for the erection of billboards is more to be protected than his neighbor's right to a view unimpaired by such ogstructions. W. L. O.

WHEN REMAINDERS ARE VESTED AND WHEN CONTINGENT.—A settlement was made upon C for life, then upon Ch C for life, and thereafter to the use "of the eldest son of the said C, wife of the said Ch C, who shall be living at the time of the decease of the survivor of them, the said C and Ch C" for life, and "from and after the decease of such eldest son, to the use and behoof of the next eldest son * * * who shall be living at the time of the decease of the son so dying." *Held*: That the sons of C took, under the settlement, successive vested estates for life and not contingent life estates, and that, accordingly, the limitations to such sons were not void for violating the rule against perpetuities. *In re Barbre's Settlement,* 85 L. J. Ch. 683.

There is a well known rule of law that if possible all remainders will be regarded as vested rather than contingent. *Webb* v. *Hearing,* Cro. Jac. 415. This rule or policy undoubtedly influenced this court in deciding the instant case as it did, and the only proper inquiry is whether it so influenced the court that the decision contravenes other and more definite rules of law. It has been said that "a remainder is vested in A, when, throughout its continuance, A, or A and his heirs, have the right to the immediate possession, whenever and however the preceding freehold estates may determine; a remainder is contingent, if, in order for it to come into possession, the full fillment of some condition precedent other than the determination of the preceding freehold estates is necessary." GRAY, RULE AGAINST PERPETUTIES. (3rd. Ed.) §101. This condition precedent, other than the determination of the preceding freehold estates, which must be fulfilled before a contingent estate becomes vested, may be either the ascertainment of who is to be the remainder-man, or the happening of an event which must transpire before there be any possibility of the contingent remainder coming into possession should the preceding freehold estate cease. In other words an uncertainty of (1) person or (2) event may make the remainder contingent. *Doe. d.*

Planner v. *Scudamore,* 2 B. & P. 289, 126 Eng. Rul. Cas. 1287; *Boraston's Case,* 3 Co. Rep. 19a, 76 Eng. Rul. Cas. 668; *Starnes* v. *Hill,* 112 N. C. 1, 9, 16 S. E. 1011.

There is a definition of what should constitute a vested remainder which—had it withstood criticism—would have made the decision of this case right beyond question. This is that provided there is a person in being, whether or not it be known just who he is, who would have an immediate right to the possession of the lands on the ceasing of the intermediate or precedent estate, his interest is vested. N. Y. REV. STAT., pt. 2, ch. 1, tit. 2, §13. Although this definition was sanctioned by Chancellor KENT, it is manifestly erroneous in not making necessary a certainty as to who the remainder-man is, and after some little recognition it has come to be regarded as erroneous. 4 KENT. COMM. (12th Ed.) 203; *Croxall* v. *Shererd,* 5 Wall. 268; *Kumpe* v. *Coons,* 63 Ala, 448; *Gindrat* v. *Western Ry.,* 96 Ala. 162, 11 So. 372; *Smith* v. *West,* 103 Ill. 332, (overruled in *Temple* v. *Scott,* 143 Ill. 290, 32 N. E. 366; *Chapin* v. *Crow,* 147 Ill. 219, 37 Am. St. Rep. 213, 35 N. E. 536; error admitted in *Smaw* v. *Young,* 109 Ala. 528, 20 So. 370). Yet some statutes still regard this rule as good.

There is some other seeming precedent for the court's decision. An English court has decided that, if the description can be interpreted as merely fixing the period at which the legatees shall take, the legacy is vested and not contingent. *Pearsall* v. *Simpson,* 15 Ves. 29, 33 Eng. Rul. Cas. 666. And an English court has said that where there is a limitation over which, though expressed in the form of a contingent limitation, is in fact merely dependent upon a condition essential to the determination of the interests previously limited, the court is at liberty to hold that, notwithstanding the words in form import contingency, they mean no more than that the person to take under the limitation over is to take subject to the interests so previously limited. In order for this rule of construction to be applied, the condition upon which the limitation over is dependent must involve no incident but what is essential to the determination of the interests previously limited. *Maddison* v. *Chapman,* 4 K. & J. 709, 3 De. G. & J. 536, 70 Eng. Rul. Cas. 294, 64 Eng. Rul. Cas. 30. Does the foregoing accord with the necessities of vested remainders? If it means no more than that the remainder necessarily will vest through the clearing up of the uncertainties at or before the preceding freehold estates *for any reason* determine, it may be regarded as correct; but if it means, as the court here took it to mean, that a description of a remainder-man is not a description at all, but mere surplusage provided it contains no incident other than those essential to the determination of the prior limitation *by the death* of the tenant, it is at the very least refusing to construe language used by the testator apparently for some purpose. Probably the former is the proper meaning of *Maddison* v. *Chapman,* supra, and the court in the instant case fell into error when construing it to apply to a condition which contained incidents not essential to every determination of the previous limitation. Manifestly in the instant case if the prior limitation had failed for any reason other than the death of the tenant, who would then take would be insolvable, because until such tenant died who should be

the eldest son of C *at the death* of the prior holder could not be determined.

Returning to GRAY'S definition of a vested remainder, which may be taken as being as nearly final as any which has been promulgated, this remainder would be contingent for that in the event of some possible determinations of the particular estate there would be no one with an immediate right of possession. This is true if the testator meant by "living at the death" of the tenant of the particular estate what those words imply, rather than "living at the termination of the particular estate." If the court is at liberty to so change his words, where need they stop, and why need or should a person make a will? See 8 COL. L. REV. 245; 24 LAW QUART. REV. 301; 8 ILL. L. REV. 225, 309, 404, 639; 5 MICH. L. REV. 497. H. J. C.